

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

**OVERNITE TRANSPORTATION COMPANY**

**Employer**

**and**

**KIRT A. BECNEL, An Individual**

**Case No. 15-RD-828**

**Petitioner**

**and**

**GENERAL TRUCK DRIVERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS, LOCAL  
UNION NO. 270, AFFILIATED WITH  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO**

**Union**

**SUPPLEMENTAL DECISION ON OBJECTIONS  
AND CHALLENGES AND CERTIFICATION  
OF RESULTS OF ELECTION**

This report contains my findings with regard to an election that was conducted in the above matter. Six ballots were challenged during the election, and these challenged ballots were sufficient in number to determine the outcome of the election. Subsequently, both the Union and Employer timely filed objections to the election. As will be discussed further below, I am directing that two of the challenges be sustained and that the objections be overruled. Because the remaining challenged ballots are no longer sufficient in number to determine the outcome of the election I am issuing a Certification of Results.

## **Procedural History**

On November 8, 2002, the Acting Regional Director for Region 15 issued a Decision and Direction of Election in which he directed that an election be conducted in the following unit:

All full time and regular part-time road drivers, city drivers, dock workers, OS&D clerks and leadpersons, excluding all mechanics, office clerical employees, sales representatives and/or account managers, and supervisors as defined in the Act.<sup>1</sup>

By letter dated November 26, 2002, the Acting Regional Director directed that a portion of the election be conducted manually and a portion of the election conducted by mail. The manual portion of the election was held on December 6, 2002, and the mail ballot portion of the election was conducted between December 6 and December 20, 2002. Because the Employer had filed an interim appeal of the Region's decision to conduct a portion of the election by mail, the ballots were impounded at the conclusion of the election while the Board considered the Employer's appeal. On January 27, 2003, after the Board had denied the appeal, the ballots were counted. The Tally of Ballots served upon the parties at that time disclosed the following results:

Approximate number of eligible voters.....	26
Number of void ballots.....	1
Number of votes cast for Union.....	7
Number of votes cast against participating labor organization.....	11
Number of challenged ballots.....	6

The challenges were sufficient in number to affect the results of the election.

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<sup>1</sup> The payroll period ending date for eligibility to vote in the election was November 2, 2002.

The ballots of Cleveland Carter, Jr., Donald Gullage, Bobby E. James, Jr., Oike J. Lutchter, Charlie R. Scott, and Winston B. Thomas, Sr., who each voted by mail, were challenged by both the Board agent conducting the vote count and the Employer. The Board agent challenged their ballots because their employment status was at issue as to whether they had resigned their employment in settlement of a racial discrimination lawsuit before the United States District Court for the Eastern District of Louisiana (the Court). The Employer challenged their ballots on the grounds that they had resigned at the time of the election and that the Region had improperly allowed them to vote by mail.

On January 28, 2003, the Union filed “Teamsters Objections to Election,” a copy of which is appended as Attachment A. The following day the Employer filed “Objections to Conduct of Election and Conduct Affecting the Results of the Election.” A copy of those objections is appended as Attachment B.

Pursuant to Section 102.69 of the Board’s Rules and Regulations, Series 8, as amended, an investigation of the challenged ballots and objections has been conducted, and the undersigned concludes as follows:

### **The Challenges**

#### **Background**

As noted above, the ballots of Cleveland Carter, Jr., Donald Gullage, Bobby E. James, Jr., Oike J. Lutchter, Charlie R. Scott, and Winston B. Thomas, Sr. were challenged by both the Board and the Employer. These six individuals participated in a nationwide strike against the Employer that ended in late October, 2002. Prior to the end of the strike, these six individuals and others became

involved in lawsuits before the Court, in Civil Action No. 00-1260 combined with 00-2896, alleging racial discrimination by the Employer in violation of Title VII. On March 21, 2002, the Employer and a lawyer for the six individuals entered into a settlement providing for these individuals' resignations in exchange for the Employer's payment of \$10,000 to each of them. Subsequently, these six individuals did not execute the settlement agreement, an issue having arisen as to whether the lawyer who entered into the settlement had the authority to do so. The six individuals subsequently retained new counsel and sought to renegotiate the settlement. The Employer, in turn filed a Motion to Enforce Settlement Agreement with the Court.

The six individuals who cast challenged ballots were also the subject of Board charges. On April 17, 2002, Oike Lutchter filed a charge in Case No. 15-CA-16551 alleging that the Employer discharged him, Carter and James because of their union activities. By letter dated June 27, 2002, the Region dismissed this charge, partly on the basis that the Employer had assured the Region that they would retain their employee status if the Court settlement was overturned. On November 4, 2002, the Union filed a charge in Case No. 15-CA-16811, alleging that the Employer had unlawfully refused to reinstate the six individuals who cast challenged ballots upon their unconditional offer to return to work. This charge was dismissed by letter dated December 16, 2002. A copy of this letter is appended hereto as Attachment C. By letter dated February 24, 2003, the Region's dismissal of the charge in Case No. 15-CA-16811 was sustained by the Office of Appeals.

The Board's general policy with regard to individuals whose employee status is being determined in another forum is to allow them to vote subject to challenge.<sup>2</sup> The Employer challenged the ballots of the six individuals in contending that pursuant to the aforementioned Court settlement, they had resigned their employment prior to the election. The Petitioner shares this view. The Employer also maintains that their ballots should not be counted because the Region had improperly allowed them to vote by mail. The Union, as will be discussed later in this Decision, contends that these individuals did not enter into the above-described settlement and were still employees at the time of the election. It further maintains that they are all discriminatees whom the Employer unlawfully refused to reinstate when they offered to return to work from the Union's strike.

Winston B Thomas, Sr. and Donald Gullage

On February 6, 2003, both Gullage and Thomas each withdrew their opposition to the Employer's motion to enforce the settlement. Each of them executed and filed a "Withdrawal of Objection to Motion to Enforce Settlement Agreements" with the Court. Copies of these documents are appended as Attachments D(a) and D(b). Each of these documents contains language agreeing and consenting to the Court entering into an Order granting the Employer's motion to enforce the settlement agreements. The Court has yet to issue a final decision as to enforcement of the settlement agreements. Even though Gullage and Thomas

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<sup>2</sup> *Curtis Industries*, 310 NLRB 1212 (1993). This case also stands for the proposition that challenges based on an employment situation that is unresolved due to Federal Court litigation, will be resolved as ineligible if, subsequent to the election, the Regional Director determines that the Federal lawsuit will not be resolved with "reasonable promptness." During the Region's instant investigation, it made contact with Tanya Lee, Section N Clerk for the Court. Lee advised that the settlement dispute was submitted to the Court on January 30, 2003, and that it may take up to six months after such submission for the Court to decide this matter.

have withdrawn their opposition to the settlement, the Union continues to maintain that they are eligible to vote.<sup>3</sup> Although it speculates that the withdrawals could possibly have been coerced, it has not profered any evidence in support of that contention. It is undisputed that Thomas and Gullage have withdrawn their opposition to the Court settlement and filed motions with the Court that it be enforced. As part of this settlement, which was entered into several months prior to the election, they resigned. My finding that they in fact resigned several months before the election moots the Union's argument that the Employer wrongfully refused to reinstate them, as they were no longer employed at the time the Employer allegedly denied them reinstatement after the October 2002 end of the Union's strike against the Employer. As earlier noted, the Office of Appeals sustained the Region's dismissal of the charge in Case No.16811 which alleged that the Employer's refusal to reinstate them was in violation of the Act. Inasmuch as Thomas and Gullage, by moving for enforcement of the Court settlement, have acknowledged that they resigned well before the election, I am sustaining the challenges to their ballots. .

Cleveland Carter, Jr., Bobby E. James, Jr., Oike J. Lutchter, Charlie R. Scott.

The remaining challenges are not sufficient in number to affect the results of the election. Accordingly, there is no need to consider them.

### **The Employer's Objections**

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<sup>3</sup> During the investigation of the objections and challenges, both Gullage and Thomas were contacted. Gullage refused to discuss the settlement with the Board agent investigating the matter. Thomas confirmed he had withdrawn his opposition to the Employer's Motion to Enforce Settlement and stated he had not been coerced into doing so. He also confirmed that by withdrawing his opposition to the above Motion, and moving that the settlement be enforced, he acknowledged that he had resigned his employment at the time the settlement was entered into.

The Employer's objections all center around conduct affecting the six individuals who cast challenged ballots. Objection Nos. 1 and 3 allege that the Region interfered with the election by allowing them to vote by mail. Objection Nos. 2 and 4 essentially allege that Oike Lutchter engaged in objectionable conduct by coercing Cleveland Carter, Jr., Donald Gullage, Bobby E. James, Jr., Charlie R. Scott and Winston B. Thomas, Sr. to overturn the above-described settlement. On January 29, 2003, the Region dismissed a charge filed by the Employer in Case No. 15-CB-5044 alleging such coercion. An appeal of said dismissal is pending before the Office of Appeals. Inasmuch as I have sustained the challenges to the ballots of Donald Gullage and Winston B. Thomas, Sr., and the remaining ballots are not determinative, the Employer's objections have been rendered moot and need not be considered further. I am therefore overruling these objections.

### **The Union's Objections**

Like the Employer's objections, the objections filed by the Union concern conduct affecting the six individuals who cast challenged ballots. Objection No. 1 alleges that the Region should not have proceeded with the election because of the pending litigation regarding their employment status. In support of this objection, the Petitioner simply submitted documents relating to the attempt to overturn the Court settlement. In Objection No. 2, the Union contends that the election should not have proceeded in light of the Employer's failure to reinstate the six individuals upon their unconditional offer to return to work. The Employer denies it engaged in any objectionable conduct. I find that both of these objections lack merit.

With regard to Objection No. 1, the Board's policy concerning individuals whose employee status is being determined in another forum is, as previously noted, to proceed with the election and allow them to vote subject to challenge. *Curtis Industries*, supra. Thus, the Region's decision to proceed to an election notwithstanding the unresolved status of the six was in accordance with Board policy.

With regard to Objection No. 2, alleging that the Region acted improperly by proceeding with the election in the face of unresolved unfair labor practices, namely the refusal to reinstate the six individuals who cast challenged ballots, the Region's investigation of the charge in Case No. 15-CA-16811 showed that the Employer's conduct in this regard was not an unfair labor practice, and the Region's findings were sustained on appeal.

Accordingly, I am overruling the Union's objections.

### **Summary and Conclusions**

In sum, I have sustained the challenges to the ballots of Winston B. Thomas, Sr. and Donald Gullage. In addition, I have overruled the objections filed by both the Union and the Employer. Inasmuch as the remaining challenged ballots are insufficient in number to affect the results of the election, I am issuing a Certification of Results.

### **Certification of Results of Election**

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that no collective-bargaining representative has been selected.



As authorized by the National Labor Relations Board,

It is certified that a majority of the valid ballots has not been cast for any labor organization and that no labor organization is the exclusive representative of these employees in the bargaining unit described below:

All full time and regular part-time road drivers, city drivers, dock workers, OS&D clerks and leadpersons, excluding all mechanics, office clerical employees, sales representatives and/or account managers, and supervisors as defined in the Act.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Secs. 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the Board in Washington, D.C. The request for review must be received by the Board in Washington, D.C. by March 17, 2003.<sup>4</sup>

Dated at New Orleans, Louisiana this 3<sup>rd</sup> day of March, 2003.

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Rodney D. Johnson  
Acting Regional Director  
National Labor Relations Board  
Region 15  
1515 Poydras Street, Suite 610  
New Orleans, La. 70112

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<sup>4</sup> Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Supplemental Decision, is not part of the record before the Board unless appended to the request for review or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.